PT 05-38
Tax Type: Property Tax
Issue: Government Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

VILLAGE OF HOPKINS PARK,	**Docket No: 04 PT 0042** **Real Estate Tax Exemption** **For 2003 Tax Year**
Applicant	
v.	**P.I.N.S. 10-19-16-203-011, 014, 024** **10-19-15-100-002, 013, 015, 016, 017, 018, 019, 035, 046, 050, 051, 052, 053** **10-19-15-104-063, 064, 065** **10-19-36-302-001**
THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS,	**Kankakee County Parcels**
	Kenneth J. Galvin **Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Gerald Dempsey, Klein, Thorpe and Jenkins, Ltd., on behalf of the Village of Hopkins Park; Ms. Brenda L. Gorski, on behalf of Intervenors, Kankakee County; Mr. John Alshuler, Special Assistant Attorney General, on behalf of The Department of Revenue of the State of Illinois.

SYNOPSIS:

This proceeding raises the issue of whether real estate identified by Kankakee County Parcel Index Numbers captioned above (hereinafter the "subject property") qualifies for exemption from 2003 real estate taxes under 35 ILCS 200/15-60, which exempts certain "Taxing District Property."

The controversy arises as follows: On January 15, 2004, the Village of Hopkins Park (hereinafter the "Village" or the "applicant") filed twenty Applications for Property

Tax Exemption for the subject property with the Kankakee County Board of Review (hereinafter the "Board"). The Board reviewed the Village's Applications and recommended to the Illinois Department of Revenue (hereinafter the "Department") that a full year exemption be granted for each of the twenty parcels.

The Department rejected the Board's recommendation in twenty determinations, dated April 15, 2004, finding for each parcel that the subject property was not in exempt use in 2003. On May 18, 2004, the Village filed timely requests for a hearing as to the denials. On July 13, 2004, Kankakee County intervened in this matter. On June 15, 2005, the Village presented evidence at a formal evidentiary hearing with James P. Bartley, counsel for the Village, testifying. Following submission of all evidence and a careful review of the record, it is recommended that the Department's denial of exemption for all twenty parcels be affirmed.

FINDINGS OF FACT:

1. Dept. Ex. Nos. 1 through 20 establish the Department's jurisdiction over this matter and its position that the subject property was not in exempt use in 2003. Tr. pp. 10-13; Dept. Ex. Nos. 1 through 20.
2. The Village obtained ownership of parcels 10-19-15-100-002, 013, 015, 016, 017, 018, 019, 10-19-15-104-065, 10-19-16-203-011 and 014 (10 parcels) by an Administrator's Deed (from the Estate of Nelson Williams) recorded February 4, 2000. Tr. p. 18; Dept. Ex. No. 1.
3. The Village obtained ownership of parcels 10-19-15-100-035, 046, 050, 051, 052, 053, 10-19-15-104-063, 064, 10-19-16-203-024 and 10-19-36-302-001 (10 parcels)

by an Administrator's Deed (from the Estate of Nelson Williams) recorded December 15, 1999. Tr. pp. 19-20; Dept. Ex. No. 8.

4. The 20 parcels are located outside of the municipal boundaries of the Village of Hopkins Park. Tr. pp. 22-23, 45.

CONCLUSIONS OF LAW:

An examination of the record establishes that the Village of Hopkins Park has not demonstrated by the presentation of testimony, exhibits and argument, evidence sufficient to warrant an exemption of the subject property for the 2003 tax year. In support thereof, I make the following conclusions.

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

> The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limits imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may

place restrictions on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-60 of the Property Tax Code which exempts certain taxing district property:

> Taxing District Property. All property belonging to any county or municipality used exclusively for the maintenance of the poor is exempt , as is all property owned by a taxing district that is being held for future expansion or development, except if leased by the taxing district to lessees for use for other than public purposes.
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> Also exempt are:
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> (d) all property owned by any municipality located outside its incorporated limits but within the same county when used as a tuberculosis sanitarium, farm colony in connection with a house of correction, or nursery, garden, or farm, or for the growing of shrubs, trees, flowers, vegetables, and plants for use in beautifying, maintaining, and operating playgrounds, parks, parkways, public grounds, buildings, and institutions owned or controlled by the municipality;
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> 35 ILCS 200/15-60.

The Village's position in this case is that the subject property is exempt under the initial language of the statute expressly exempting all property owned by a taxing district that is being held for future expansion or development except if leased by the taxing district to lessees for use other than public purposes. Tr. p. 9. The Village argued at the evidentiary hearing that "there is ample evidence in the record here that the Village was holding the property for future development." Tr. p. 69. The position of the Intervenors, Kankakee County, is that the initial language of the statute is not applicable in this case because it excludes property located outside of a village's incorporated limits. According to the Intervenors, only Section (d) of 35 ILCS 200/15-60 is applicable because "it is

undisputed that all of the property is outside the village limit… and many of these properties are considerably outside the village limits." Tr. pp. 64-65.

The Department's April 15, 2004, determinations denying exemption for the 20 parcels were based solely on the Department's conclusion that the subject property was not in exempt use in 2003. Because the Department denied the exemption solely on lack of exempt use, it is implicit that the Department determined that the Village owned the subject property. These conclusions were unchallenged in the instant proceeding: The Village obtained ownership of parcels 10-19-15-100-002, 013, 015, 016, 017, 018, 019, 10-19-15-104-065, 10-19-16-203-011 and 014 (10 parcels) by an Administrator's Deed (from the Estate of Nelson Williams) recorded February 4, 2000. Tr. p. 18; Dept. Ex. No. 1. The Village obtained ownership of parcels 10-19-15-100-035, 046, 050, 051, 052, 053, 10-19-15-104-063, 064, 10-19-16-203-024 and 10-19-36-302-001 (10 parcels) by an Administrator's Deed (from the Estate of Nelson Williams) recorded December 15, 1999. Tr. pp. 19-20; Dept. Ex. No. 8. Accordingly, the only real issue is whether the subject property was actually and exclusively used for an exempt purpose in tax year 2003.

Mr. Bartley, Counsel for the Village, testified that all 20 parcels are located outside the incorporated limits of the Village of Hopkins Park. Tr. pp. 22-23, 45. Mr. Bartley also testified that in tax year 2003, none of the 20 parcels was used for a tuberculosis sanitarium, a farm colony for a house of corrections, a nursery, a garden, a farm for growing shrubs, trees, flowers, vegetables and plants for use in beautifying, maintaining and operating the Village, playground, park or parkways, public grounds buildings or institutions. Tr. pp. 47-50. In closing arguments, the Village's attorney for

this evidentiary hearing, Mr. Dempsey, stated that "we are not claiming that we fit within Subparagraph (d)" of 35 ILCS 200/15-60. Tr. p. 67. I conclude, from the testimony and arguments presented by the Village at the hearing, that the subject property does not qualify for exemption under 35 ILCS 200/15-60 (d).

The Village argued at the evidentiary hearing that it was not seeking exemption under subparagraph (d) of 35 ILCS 200/15-60 and that only the "initial language" of the statute controlled. Assuming that the Village is correct in this argument, the Village has failed to show, through testimony and documentary evidence, that the 20 parcels were being used for "future expansion or development" in 2003. On each of the 20 PTAX-300's, "Application for Non-homestead Property Tax Exemption[s]," submitted to the Kankakee County Board of Review, the Village responded "None" to question 15, which asks "Describe the specific activities that take place on this property. Write the exact date each activity began and how frequently it takes place." Attached to each PTAX-300 for the 20 parcels, is an "Affidavit of Use" signed by the Village Clerk. The exact wording from "question 15" is repeated in the Affidavits of Use and for each parcel, the Village Clerk responded "none" Dept. Ex. Nos. 1-20. I must conclude from this that no activities took place on any of the 20 parcels during 2003.

Mr. Bartley testified that after reviewing the original PTAX-300's sent in by the Village Clerk, he prepared "an affidavit to submit with the application[s] stating what the proposed use of the property was." Tr. p. 29. This "Affidavit As To Use" was signed by the Mayor of the Village and states that "by inadvertence the applications were not accompanied by an affidavit or statement of exempt use." The "Affidavit As To Use" then states "[T]hat each parcel was used from the date of acquisition by the Village to the

present as vacant land for public use as open space for park and recreation, and for future expansion and development, and that no parcel was or is leased by the Village." App. Ex. No. 2. If the 20 parcels were used for "park and recreation" the exemption would apparently fall under Subparagraph (d) of the statute which, as discussed previously, Counsel for the Village admitted is inapplicable. Tr. p. 67. Mr. Bartley was asked if the Village planted shrubs or flowers on the parcels. He responded "Not to my knowledge. But to my knowledge, they were vacant properties owned by the Village." Tr. p. 49. Photographs of the 20 parcels were submitted with the PTAX-300's. The photographs show undeveloped, vacant land with trees, bushes, and litter. I am unable to conclude from the photographs, the testimony and the "Affidavit As To Use" that the parcels were used for "park and recreation." No other documentary evidence was admitted to show that the parcels were used for "park and recreation."

The Mayor's "Affidavit As To Use" stating that the parcels are used for "future expansion and development" is a legal conclusion and can be given no weight in these proceedings. The Mayor was not called to testify at the evidentiary hearing. The Village offered into evidence minutes of a "Village of Hopkins Park Board Meeting" held December 13, 1999, which under the topic "Public Safety," states that "Mr. Washington read a letter from the attorney regarding Nelson Williams 11 parcels he wanted to donate to the village but need[s] to pay the taxes in the amount of $4,400.00. Motion to pay $4,400.00 taxes to obtain Nelson William's property [seconded]." App. Ex. No. 1. Mr. Bartley testified that he had no evidence that the taxes were ever paid on the 11 parcels. Tr. p. 52. No evidence was offered with regard to the payment of taxes for the other 9 parcels. My research indicates no case, and Counsel for the Village has cited no case, in

which "moving" to pay taxes was found to be evidence of "future expansion and development."

No other documentary evidence was offered by the Village. Mr. Bartley testified that he "believed" that in 2003, "those parcels were discussed with regard to the creation and their request that I create a park board for them." "In general, the idea was to utilize them for some developmental purposes or park purpose or something that would benefit the village and the people that lived there." Tr. pp. 40-41. Mr. Bartley testified that he had a copy of an ordinance creating a park board "in my office. I did not bring it." Tr. p. 52. When asked if the park board was in effect in 2003, the year at issue in this case, Mr. Bartley responded "I can't answer the question because I was advised that there was, and I was given the numbers, but I did not find any ordinance or anything that created it…" Tr. pp. 52-53. There was no documentary evidence offered showing that a park board was created.

According to Mr. Bartley, there were a number of conversations "over the span of time as to what might be done with those parcels." Tr. p. 41. He was not specific as to when these conversations took place or who was present. No minutes of these conversations were offered. No documentary evidence was offered showing that annexation proceedings for the land between the Village and the subject property had been discussed at a Village meeting. It was never explained at the evidentiary hearing how any expansion of the Village or development of the parcels could be achieved without annexing the land between the Village and the parcels, with many of the parcels being "considerably outside the village limits." Tr. pp. 64-65.

The Village's actual use determines whether the property in question is used for an exempt purpose. The activities described above, which consist mainly of having undocumented "conversations" about how to utilize the property, constitute, at most, very preliminary steps directed toward some future use of the property. The activities barely reflect an intention to use the property for an exempt purpose and case law in Illinois is clear that intention to use is not the equivalent of use. Skil Corp. v. Korzen, 32 Ill. 2d 249, 252 (1965). Based on the testimony and evidence admitted, I am unable to conclude that the subject property, consisting of the 20 parcels, was used for an exempt purpose in 2003.

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof upon the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994). The Village, having the burden of proof in this case, has failed to prove that the 20 parcels were other than vacant property in 2003 or that any activities took place on the property in 2003 or that the Village had taken any steps, other than undocumented conversations, with regard to the use of the property for an exempt purpose in 2003.

WHEREFORE, for the reasons stated above, it is recommended that the Department's determination which denied the exemption from 2003 real estate taxes on

the grounds that the subject property was not in exempt use should be affirmed and the twenty Kankakee County Parcels, identified by the property index numbers captioned above, should not be exempt from property taxes in 2003.

September 26, 2005

Kenneth J. Galvin
Administrative Law Judge